

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KATHLEEN HARDY,

Plaintiff,

v.

Civ. Action No. 5:09-CV-112

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

**REPORT AND RECOMMENDATION THAT COMPLAINT BE DISMISSED
WITHOUT PREJUDICE AND THIS CASE STRICKEN FROM THE COURT'S
DOCKET**

Plaintiff filed her Complaint in this action on October 9, 2009.¹ Plaintiff paid the \$350.00 filing fee, and a summons was issued on October 9, 2009.²

Local Rule 5.06(c) requires that the claimant in a social security action “prepare the summonses in paper form and provide them to the Clerks’ office, who will sign and seal the completed forms and return them by regular mail to counsel for the plaintiff.” Once the summons is returned to counsel, “[i]t is the responsibility of the parties, not the Clerk’s office, to serve the summons.” LR Gen P 5.06(c). If claimant’s counsel does not serve the Commissioner within 120 days after the summons is issued, and unless good cause exists, the Court may dismiss the action without prejudice. Fed. R. Civ. P. 4(m).

The summons was returned on October 9, 2010. The 120 day period expired on February 6, 2010. Defendant is still yet to be served with the summons. Therefore, the Court

¹ Doc. No. 1.

² Doc. No. 3.

recommends that this action be **DISMISSED** without prejudice and the case be stricken from the Court's docket.

Any party who appears *pro se* and any counsel of record, as applicable, may, within fourteen (14) days of the date of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be submitted to the District Court Judge of Record. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

DATED: March 1, 2010

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE